

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 2000-487-E - ORDER NO. 2001-108  
FEBRUARY 6, 2001

IN RE: Application of Columbia Energy, LLC for	)	ORDER GRANTING
Certificates of Public Convenience and	)	CERTIFICATES
Necessity to Construct a Major Utility	)	
Facility and for Authorization to Sell Heat.	)	

**INTRODUCTION**

This matter comes before the Public Service Commission of South Carolina ("Commission") by way of the Application, filed on September 22, 2000, of Columbia Energy LLC ("Columbia Energy"), for the authorization for the construction and operation of a cogeneration power facility ("Facility") for the production of electric power and thermal energy to be located in Calhoun County, South Carolina, and for the authorization of the sale of thermal energy from the Facility by contract to an industrial user. Columbia Energy seeks authorization for the construction of the Facility in the nature of a Certificate of Environmental Compatibility and Public Convenience and Necessity pursuant to the provisions of S.C. Code Ann. §§58-33-10 et seq. (Supp. 2000) ("the Siting Act"). The Company seeks authorization for the sale of thermal energy in the nature of a Certificate of Public Convenience and Necessity as required by the provisions of S.C. Code Ann. §§58-5-10 et. seq. (Supp. 2000), and our rules and regulations. Because the record of this proceeding establishes that Columbia Energy has satisfied the

statutory requirements for the relief it seeks, the Commission will herein approve the Application and issue the requested Certificates.

Prior to the submission of its Application, Columbia Energy published notice of its intent to apply for a Certificate under the Siting Act, as the provisions of the Section 58-33-120(3) requires. In addition, the Application included certification that Columbia Energy had served a copy of the Application on those governmental officials and such other persons as Section 58-33-120(2) of the Siting Act requires.

Upon receipt of Columbia Energy's Application, the Commission's Executive Director required Columbia Energy to publish a prepared Notice of Filing which described the nature of the Application and advised all interested parties of the manner in which they might intervene or otherwise participate in this proceeding. Columbia Energy submitted an affidavit which demonstrated compliance with the Executive Director's instructions. Philip S. Porter, Consumer Advocate for the State of South Carolina, ("the Consumer Advocate"), intervened in this proceeding. South Carolina Electric & Gas Company ("SCE&G") likewise intervened in the proceeding.

On October 17, 2000, the Commission issued its Order No. 2000-843, by which the Commission established dates for prefilings testimony and exhibits of Columbia Energy, the Commission Staff and intervenors. On December 13, 2000, the Commission issued Order No. 2000-1001, by which the Commission extended the originally established dates for submission of intended direct testimony of the Commission Staff and intervenors. Columbia Energy and the Commission Staff filed their intended direct testimony in compliance with the terms of the Commission's orders.

On December 20, 2000, in accordance with Section 58-33-130 of the Siting Act and with the Commission's Rules of Practice and Procedure, the Commission conducted an evidentiary hearing in this proceeding. Robert T. Bockman, Esquire, represented Columbia Energy, Nancy Vaughn Coombs, Esquire, represented the Consumer Advocate; Catherine D. Taylor, Esquire, and Craig Collins, Esquire, represented SCE&G; and F. David Butler, General Counsel, represented the Commission Staff. Columbia Energy offered the testimony of Kent J. Morton and Ray L. Ratheal; the Commission Staff presented the testimony of A. R. Watts. In addition to the testimony of those three witnesses and one hearing exhibit, the record of this proceeding includes Columbia Energy's Application, the various notices, pleadings and orders to which this Order has previously referred.

Upon full review of the evidence in this proceeding, the Commission herein grants the relief which Columbia Energy seeks and issues this Order as the certificates to construct the Facility and sell thermal energy as the Application describes. We base that decision on the following findings and conclusions.

#### **FINDINGS OF FACT**

1. Columbia Energy LLC is a limited liability company organized under the laws of the State of Delaware, with its principal place of business in Northbrook, Illinois. Columbia Energy is qualified to transact business in the State of South Carolina.
2. Columbia Energy intends to construct and operate a combined cycle cogeneration power plant with a nominal net capacity of approximately 500 megawatts (MW) to be located on a site leased from Eastman Chemical Company, Carolina

Operations ("Carolina Eastman") at its manufacturing facility in Calhoun County, South Carolina. The Facility will be known as "the Columbia Energy Center." Columbia Energy expects the Columbia Energy Center to commence commercial operation by June 2003.

3. The Columbia Energy Center will consist of two combustion turbines (each nominally rated at 170 MW), two heat recovery generators equipped with duct burners, one steam turbine (nominally rated at 175 MW), auxiliary boilers to provide thermal energy during periods of maintenance or outage of the Facility, a fuel oil storage tank, water and cooling systems, electrical interconnections, and other auxiliary equipment and structures. A heat transfer media ("HTM") system will also be a part of the Facility.

4. The Facility will include an electric substation to increase generator voltage to 230kv for interconnection to SCE&G's electric transmission system.

5. The primary fuel for the combustion turbines will be natural gas with low sulphur distillate oil as a back-up.

6. The Facility will be a "Qualifying Facility" ("QF") under the terms of the Public Utility Regulatory Policies Act of 1978 ("PURPA") and the rules and regulations of the Federal Energy Regulatory Commission ("FERC").

7. Columbia Energy and Carolina Eastman have entered into a long-term (20 years) Energy Services Agreement ("ESA") under the terms of which Columbia Energy will sell thermal energy from the Facility to Carolina Eastman for use in its manufacturing operations. Carolina Eastman presently self-generates most of the thermal

energy it uses in its process, and the thermal energy from the Facility will enable Carolina Eastman to displace its self-generation. Columbia Energy designed the Facility using technology to meet Carolina Eastman's specific requirements to enhance its operating efficiencies and to provide a reliable source of thermal energy and, ultimately, electric power. The purchase of thermal energy under the ESA will permit Carolina Eastman to reduce its operating costs, minimize its plant assets and concentrate on its core business by "out-sourcing" its energy operations. The arrangement will enable Carolina Eastman to improve its competitive position in the marketplace for its products, and the Facility will be a more "environmentally friendly" alternative to its current self-generation operations.

8. The ESA also provides for the sale of electric power from the Facility to Carolina Eastman if appropriate amendments are made to current law to permit retail sales. In the meantime, the electric power not needed for the Facility itself will be available for wholesale sales to South Carolina electrical utilities and others as a function of the Columbia Energy Center's QF status.

9. The Facility is needed to enable Columbia Energy to satisfy its contractual obligations to Carolina Eastman under the ESA. The nominal net capacity of the Columbia Energy Center of approximately 500 MW is necessary to enable Columbia Energy to meet its contractual obligation to produce and sell thermal energy to Carolina Eastman in a cost efficient manner.

10. The Facility will be located on approximately 20 acres of land leased from Carolina Eastman. The physical components of the Facility will be placed in close

proximity to Carolina Eastman's existing manufacturing plant. Columbia Energy has applied for the necessary air permit from the South Carolina Department of Health and Environmental Control ("DHEC"), and air quality modeling demonstrates that there will be no significant impacts on air quality from the Facility. All wastewater discharges will use Carolina Eastman's existing discharge systems and will meet the conditions of its NPDES Permit. During construction, management of stormwater will comply with all regulatory guidelines. During operations, all stormwater will be discharged into Carolina Eastman's permitted system, consistent with the applicable limitations. There are no threatened or endangered species or known archaeological sites on the Facility's site. Any impact on wetlands will be permitted in accordance with regulatory requirements.

11. There are no negative environmental impacts as a result of the intended construction and operation of the Facility.

12. Neither the Commission nor Columbia Energy has received any adverse comments from any governmental agency responsible for environmental protection, land use planning, or other regulation of the site or the Facility.

13. Columbia Energy and the Commission have satisfied all statutory requirements for notice and opportunity for hearing which the Siting Act describes.

14. The ESA contains extensively negotiated provisions for the following: (1) coordinating construction efforts and safety practices; (2) coordinating energy deliveries, fuel supplies and maintenance schedules; (3) arranging reliable back-up energy supplies in the event the Facility is not operating for any reason; (4) risk of loss and indemnification; (5) billing and payment; (6) events of default and remedies therefor; (7)

audit rights; and (8) dispute resolution. Contractual provisions for governing law, notice and service, assignment, severability and survival, force majeure, insurance, and confidentiality are also included in the ESA.

### **CONCLUSIONS OF LAW**

1. Columbia Energy's obligation to provide thermal energy to Carolina Eastman under the terms of the Energy Services Agreement duly establish the need for the Facility. The technology which Columbia Energy has selected to produce and provide the thermal energy requires the construction and operation of the Facility.
2. There are no adverse environmental impacts associated with the anticipated construction and operation of the Facility.
3. Considering the state of available technology and the nature and economies of various alternatives and other pertinent considerations, the impact of the Facility on the environment is justified.
4. By providing Carolina Eastman with a reliable and economic source of thermal energy to displace its self-generation, the Facility will serve the interests of Carolina Eastman's system economy and reliability. As a QF under PURPA, the Facility will be able to make available power and energy to jurisdictional electric utilities and to other wholesale suppliers at their avoided costs, thereby further enhancing the interests of system economy and reliability on a larger scale. The Columbia Energy Center's combined cycle cogeneration power plant with its nominal net capacity of approximately 500 MW is the most economical design and technology based on the size of the project and the contractual obligations to produce and sell thermal energy to Carolina Eastman.

5. There is a reasonable assurance that the Facility will conform to applicable state and local laws and regulations.

6. Public convenience and necessity require the construction of the Facility.

7. The sale of thermal energy under terms of the ESA would constitute a "public utility" service and a basis for the exercise of the Commission's regulatory jurisdiction under S.C. Code Ann. §§ 58-5-10 et. Seq. (Supp. 2000). See Order No. 96-57, issued in SCPSC Docket No. 95-1124-E, on January 23, 1996.

8. The contractual relationship between the parties under the ESA represents the product of extensive negotiation of terms and conditions by two sophisticated business entities, both of which were assisted by legal counsel throughout the negotiations. In addition to the agreed pricing provisions for the sale of thermal energy (including negotiated price escalation mechanisms), the ESA provides for dispute resolution, remedies for breach, and audit rights, all of which are designed to protect each party's interests in the contractual relationship.

9. Because of the extensive negotiations and the bargaining process, the business sophistication of the parties involved and the comprehensive provisions that the parties have incorporated into the ESA to protect their respective interests, public convenience and necessity would best be served by the Commission's certification of Columbia Energy to operate under the terms of the ESA without the application of the regulatory requirements which we have promulgated for public utilities under our jurisdiction. See, 26 S.C. Code Regs. R. 103-400 et. seq. (for gas systems); R. 103-500 et seq. (for sewerage utilities); and R. 103-700 et seq. (for water utilities) (1976), as



amended. Those requirements are unnecessary here to balance or protect the interests of the public or of the parties in these particular circumstances. Our certification of operations under the ESA here is similar to the treatment we have afforded contract for sales of thermal energy in previous proceedings. See, Order No. 96-192 issued in SCPSC Docket No. 96-049-E, on March 14, 1996; and Order No. 96-433, issued in Docket No. 96-189-E, on June 27, 1996. We do, however, reserve the right to reexamine such matters in the future should such reexamination become necessary or appropriate.

10. The Commission Staff should develop additional regulations for our approval for implementation of the Siting Act for use in the future.

IT IS THEREFORE ORDERED THAT:

1. The Application of Columbia Energy LLC for a Certificate of Environmental Compatibility and Public Convenience and Necessity for the construction and operation of the Columbia Energy Center be, and hereby is, approved.

2. Columbia Energy LLC shall notify the Commission's Executive Director of the commercial operation of the Columbia Energy Center within ten (10) days of such operation.

3. A Certificate of Public Convenience and Necessity is hereby granted for the Energy Services Agreement between Columbia Energy and Carolina Eastman.

4. The Commission Staff is instructed to develop additional regulations for our approval for implementation of the Siting Act for use in the future.

5. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

  
Chairman

ATTEST:

  
Executive Director

(SEAL)